

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERIN L. SPENCER

vs.

BMW OF NORTH AMERICA, LLC, AND
CARMAX AUTO SUPERSTORES, INC.,

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NO: SA: 14-CV-00869-DAE

**FIRST AMENDED DESIGNATION OF EXPERT WITNESSES OF DEFENDANT
BMW OF NORTH AMERICA, L.L.C.**

NOW COMES the Defendant, BMW OF NORTH AMERICA, L.L.C. ("BMW NA")
and as its First Amended Designation of Expert Witnesses in the above styled and
numbered action would respectfully show as follows:

I.

NON-RETAINED EXPERT WITNESSES

City of San Antonio EMS
And/or its Custodian of Records
621 N. Alamo
San Antonio, Texas 78215
(210) 227-7252

University Health System
And/or its Custodian of Records
4502 Medical Drive
San Antonio, Texas 78229
(210) 358-3532

UTHSC SA, UT Medicine
And/or its Custodian of Records
8300 Floyd Curl Drive
San Antonio, Texas 78229

Donald F. Dutra, Jr., M.D.
And/or its Custodian of Records
811 E. Mistletoe
San Antonio, Texas 78212
(210) 593-4000

Lawrence Lenderman, M.D., P.A.
And/or its Custodian of Records
2424 Babcock Road, Suite 200
San Antonio, Texas 78229
(210) 616-0802

Richard E. Duey, M.D., F.A.A.O.S.
And/or its Custodian of Records
Texas Center for Athletes
21 Spurs Lane, Suite 245
San Antonio, Texas 78240

Douglas K. Smith, M.D.
Premier Medical Imaging
And/or its Custodian of Records
101 Bretford Court
San Antonio, Texas 78230
(210) 887-3789

Selena Grey, D.C.
Alivio Rehabilitation
And/or its Custodian of Records
4204 Gardendale, Ste. 107
San Antonio, Texas 78229
(210) 593-4000

Hills Drug Store
And/or its Custodian of Records
705 W. Kirk Place
San Antonio, TX 78226
(210) 225-7283

II.

RETAINED EXPERTS

1. Thomas Goetz
Bayerische Motoren Werke Aktiengesellschaft
EG 30
Knorrstr. 147
80788 Muenchen
Republic of Germany

(a) Areas of Expertise: Product Analysis, Design, Engineering and Warnings/Instructions. Mr. Goetz' CV is attached to hereto and Bates stamped BMW-SPENCER.000001.

(b) Subject Matter: Product Analysis, Design, Engineering and Warnings/Instructions.

(c) **Opinions:** Mr. Goetz will express the opinion that the parking brake system for the subject X5 vehicle is not defective and that the warnings regarding the parking brake were adequate and were not heeded. He is expected to respond to the opinions of Russell M. Gill and Jahan Rasty, Ph.D. should those experts comply with Rule 26(2)(B) and provide a complete statement of their opinions and the basis and reasons for them and/or Plaintiff makes the subject vehicle available for inspection. Mr. Goetz will address the design, standards and utility of the parking brake and transmission systems, and the warnings for the parking brake system. He will also address the battery system for the subject vehicle. He is expected to express those opinions set forth in his report which is incorporated herein by reference. See his report which is Bates stamped BMW-SPENCER.000828 through BMW-SPENCER.000835.

(d) Mr. Goetz is not being compensated by BMW of North America, LLC for time spent by him in this case.

(e) Mr. Goetz will rely upon the owner's manual for the subject 2008 BMW X5 vehicle, vehicle signage, labeling and warnings, as well as specifications regarding the parking brake and transmission system and battery, and European Standards and other standards applicable to the parking brake and transmission systems.

2. Paul Denham
Denham Ramones Engineering
1380 Pantheon Way, Suite 290
San Antonio, Texas 78232

(a) Area of Expertise: Surveying and Engineering. Mr. Denham's CV is attached to hereto and Bates stamped BMW-SPENCER.000065 through BMW-SPENCER.000066.

(b) Subject Matter: The findings of the driveway slope survey conducted on property 7718 Braun Bend on January 20, 2015. See Mr. Denham's report Bates stamped BMW-SPENCER.000064; BMW-SPENCER.000067 through BMW-SPENCER.000069. The subject driveway violated the applicable City of San Antonio Code and HUD requirements as described in the report.

(c) Mr. Denham will testify that the steep slope on which Plaintiff parked the subject vehicle and on which the vehicle was parked at the time the mechanical parking brake was released by Jason Spencer violated the applicable City of San Antonio Code and HUD requirements for that driveway.

(d) Documents on which witness relies:

- (i) City of San Antonio Sidewalk and Driveway Design and Construction Guidelines (2006); (See document Bates stamped BMW-SPENCER.000004 through BMW-SPENCER.000063).
 - (ii) Department of Housing and Urban Development Site Grading and Drainage Guidelines;
 - (iii) Survey documents, drawings, plat scales regarding 7718 Braun Bend;
- (e) Documents reflecting compensation for Mr. Denham are attached hereto and Bates stamped BMW-SPENCER-000002 through BMW-SPENCER.000003.

3. Alan L. Dorris, PhD
Dorris & Associates, Inc.
1075 Peachtree Street NE
Suite 3750
Atlanta, GA 30309

(a) Area of Expertise: Human Factors, Warnings/Instructions. Dr. Dorris' CV is attached to hereto and Bates stamped BMW-SPENCER.000847 through BMW-SPENCER.000853. See also his testimony list attached hereto and Bates stamped BMW-SPENCER.000854.

(b) Subject Matter: Human Factors; Warnings/Instructions, Causation

(c) **Opinions:** Dr. Dorris is expected to testify regarding the issues of human factors, warning and labeling for the subject 2008 BMW X5. He will address the content of the labeling on the vehicle and owner's manual. He will testify as to the lack or need of different or additional warnings regarding the subject vehicle, and he will testify that the subject vehicle and its components are not defective from a human factors or "warnings perspective". He will testify that the warnings/instructions were not heeded and that had they been heeded no accident would have occurred. He is expected to address the cause of this accident. Dr. Dorris' opinions are further set forth in his report which is

attached hereto incorporated by reference and Bates stamped BMW-SPENCER.000836 through BMW-SPENCER.000846.

(d) Documents on which witness rely:

- (1) Owner's manual for subject vehicle;
- (2) Signage, labels and warnings for subject vehicle;
- (3) Materials and references listed in his report.
- (4) References stated in his report.
- (5) Depositions of Jason and Erin Spencer.
- (6) Photographs of accident site.

4. Dr. Juan Manuel Herrera
Met-Tech, Inc.
28 San Marcos Rd.
El Paso, Texas 79922

(a) Area of Expertise: Accident Reconstruction, Engineering, Design.

Dr. Herrera's CV is attached to hereto and Bates stamped BMW-SPENCER.000855 through BMW-SPENCER.000872. His testimony list is attached hereto and Bates stamped BMW-SPENCER.000873 through BMW-SPENCER.000874.

(b) Subject Matter: Accident Reconstruction; Engineering; Vehicle Design; Causation.

(c) **Opinions:** Dr. Herrera is expected to testify as to accident reconstruction, engineering, physics, vehicle design and accident investigation and causation. It is expected that he will testify that the parking brake, battery and transmission systems are not defective and did not cause the accident in question. He will also address vehicle movement, control and perception-reaction times during the subject accident. He will address the lack of heeding warnings by the Plaintiff and Jason Spencer during the accident, and he will testify regarding the cause of the

accident. He is expected to further testify as to those matters set forth in his report which is incorporated herein by reference.

(d) Dr. Herrera's opinions are further set forth in his report which is attached hereto and Bates stamped BMW-SPENCER.000875 through BMW-SPENCER.000884.

(e) References stated in his report:

- (i) Traffic Accident Reconstruction, Lynn B. Fricke, Northwestern University Traffic Institute, Vol 2
- (ii) ECE-R13H
- (iii) Drawing of parking brake design.
- (iv) Depositions of Erin and Jason Spencer.

Defendant reserves the right to designate and/or call individuals with knowledge of relevant facts or testifying expert witnesses designated by any other party to this lawsuit.

Respectfully submitted,


J. MICHAEL MYERS
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San Antonio, Texas 78216

ATTORNEY FOR DEFENDANT,
BMW OF NORTH AMERICA, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been provided to all known counsel of record as indicated below, on the 23rd day of October, 2015.

ERIN L. SPENCER
7718 Braun Bend
San Antonio, Texas 78250

PLAINTIFF

- ☐ Local Courier Service
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ U.S. Mail
- ☒ U.S. Certified Mail
- ☐ Federal Express
- ☐ Other courier service



J. MICHAEL MYERS